

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAKE ELSINORE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015080436

ORDER GRANTING MOTION TO
DISMISS ISSUE NO. 4

Student filed a request for due process hearing (complaint) on August 4, 2015. On September 1, 2015, Lake Elsinore Unified School District filed a motion to dismiss Issue No. 4 from Student's complaint. No opposition was received.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. (Section 504)), the Americans with Disabilities Act (42 U.S.C. 12101 et seq. (ADA)) and California civil rights laws.

DISCUSSION

Student's complaint alleges that she is a student eligible for special education under the IDEA as a result of her behaviors and anxiety. Student alleges four claims, that District denied her a FAPE by: (1) failing to assess Student in all areas of suspected disability for the

2013-2014 school year; (2) failing to assess Student for her triennial individualized education program review in 2014; (3) failing to properly determine and document her present levels of performance at the triennial review; and (4) failing to comply with Section 504, the ADA and California civil rights law.

Student's Issue No. 4 arises under Section 504, the ADA and California civil rights laws, and OAH lacks jurisdiction to adjudicate claims under those statutes. Therefore, this issue cannot be heard in this due process proceeding and must be dismissed.

ORDER

1. Issue No. 4 of Student's complaint is dismissed.
2. This matter shall proceed to hearing on Issues 1, 2 and 3 of Student's complaint only.

DATE: September 11, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings